

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Civil Revision Application No.S-136 of 2024

[Liaquat Memood through his L.Rs v. Mujeeb-ur-Rehman & 09 others]

Applicant through his L.Rs by : Mr. Aziz Ahmed Laghari, Advocate

Respondents No.1 to 6 by : Nemo.

Respondent No.7 to 10 by : Mr. Ayaz Ali Rajpar, A.A.G Sindh.

Dates of Hearing : 20.04.2026

Date of Decision : 20.04.2026

ORDER

ARBAB ALI HAKRO J:- This Civil Revision Application, instituted under section 115 C.P.C, is directed against the judgment dated 15.03.2016 and decree dated 19.03.2016, rendered by the learned 2nd Additional District Judge, Mirpurkhas (“appellate Court”) in Civil Appeal No.63 of 2014, whereby the appellate Court maintained the judgment and decree dated 31.03.2014 / 01.04.2014, passed by the learned II-Senior Civil Judge, Mirpurkhas (“trial Court”) in F.C. Suit No.74 of 2011 and dismissed the appeal preferred by the applicants.

2. The original plaintiff, Liaquat Mehmood, since deceased and now represented through his legal heirs, instituted a suit seeking specific performance of an agreement dated 26.05.2006 and a decree of permanent injunction. It was pleaded that one Mst.Abida Parveen, owner of 25 paisa share in various survey numbers of Bukhari Town, Mirpurkhas, had executed a written sale agreement in favour of the plaintiff for a consideration of Rs.400,000/-, which amount was allegedly paid at the time of execution in the presence of witnesses. The plaintiff asserted that, due to pending litigation over the suit property, the parties mutually agreed that the registered sale deed

would be executed upon the conclusion of such litigation. It was further averred that the litigation over the suit property was concluded by way of compromise before the High Court on 22.12.2010, after which the plaintiff approached the legal heirs of Mst.Abida Parveen for the execution of the sale deed. However, the defendants allegedly avoided performance and ultimately refused in the first week of January, 2011, also threatening to alienate the property. The suit was thus filed seeking enforcement of the agreement and restraining the defendants from transferring the suit property.

3. Upon service, defendants No.1 to 4 filed their joint written statement, wherein they categorically denied execution of any sale agreement by Mst.Abida Parveen asserted that she had neither executed the document nor received any sale consideration. They pleaded that the alleged agreement was a forged and fabricated document, bearing forged signatures of the deceased. They further contended that no litigation was ever pending against the share of Mst.Abida Parveen, and therefore, the plea of deferred execution of the sale deed was misconceived. They alleged that the plaintiff had concocted a false story to usurp the property of the deceased. Defendants No.5 to 10 were debarred from filing written statements.

4. The trial Court framed issues and recorded evidence of both sides. The plaintiff examined Ghufra Liaquat (L.R.), Javed Iqbal Bukhari (PW-2), Tallat Arif (PW-3) and Abdul Wahab (PW-4). The defendants examined Mst.Ghazala Kausar (DW-1). After evaluating the evidence, the trial Court dismissed the suit through judgment dated 31.03.2014 and decree dated 01.04.2014, holding that the plaintiff had failed to prove the execution of the alleged sale agreement in terms of Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984 (“**QSO, 1984**”), particularly as one of the attesting witnesses, PW-2 Javed Iqbal, denied execution and stated that the document pertained to repayment of a loan advanced in 1974. The Court found the testimony of the remaining witnesses contradictory and not confidence-inspiring.

5. Aggrieved, the legal heirs of the deceased plaintiff preferred Civil Appeal No.63 of 2014 before the appellate Court. The appellate Court, after reappraising the evidence, concurred with the findings of the trial Court and dismissed the appeal by judgment dated 15.03.2016 and a decree dated 19.03.2016, holding that the plaintiffs had not discharged the burden of proving the agreement to be genuine and duly executed. The appellate Court found no illegality or infirmity in the trial Court's reasoning and maintained the dismissal of the suit.

6. The applicants thereafter invoked the revisional jurisdiction of this Court by filing the present Civil Revision Application.

7. Learned counsel for the applicant, while reiterating the grounds urged in the memo of revision, contended that both the Courts below have fallen into grave jurisdictional error by discarding the sale agreement dated 26.05.2006 on an erroneous and mechanical application of Article 79 of the QSO, 1984, without adverting to the cumulative evidentiary value of the material brought on record. He submitted that the applicant had examined the marginal witnesses, produced the original agreement, and furnished corroborative testimony establishing the payment of consideration and the circumstances under which the execution of the registered sale deed was deferred owing to pending litigation, which subsequently culminated in a compromise before this Court on 22.12.2010. Learned counsel argued that even if one attesting witness resiled, the execution stood proved through other reliable evidence within the contemplation of Article 82 of the QSO, 1984, which the Courts below failed to appreciate. He further submitted that the non-appearance of defendants No.1 to 3, 5 and 6 in the witness box created a presumption against them. Yet, the trial Court and the appellate Court ignored this material legal consequence. According to him, the impugned judgments suffer from misreading, non-reading and a failure to exercise jurisdiction vested in the Courts,

thereby warranting interference in revisional jurisdiction to prevent miscarriage of justice.

8. Learned Assistant Advocate General Sindh, appearing for the official respondents, supported the impugned judgments and submitted that no illegality, material irregularity or jurisdictional defect has been demonstrated by the applicants to justify interference under section 115 C.P.C.

9. None has appeared on behalf of the private respondents despite service of notice as well as publication through the newspaper.

10. Heard and perused the record.

11. The revisional jurisdiction of this Court under section 115 C.P.C. is supervisory and circumscribed. It is well-settled that where the Courts below have concurrently appraised the evidence and recorded findings of fact, this Court does not act as a third Court of appeal to re-evaluate the entire evidence merely because another view is possible. Interference is warranted only where the subordinate Courts have exercised jurisdiction not vested in them by law, have failed to exercise jurisdiction so vested or have acted in the exercise of their jurisdiction illegally or with material irregularity, resulting in miscarriage of justice. Concurrent findings on pure questions of fact are ordinarily not to be disturbed unless shown to be perverse, based on misreading or non-reading of material evidence or in disregard of settled legal principles.

12. Turning to the evidentiary framework, the applicants' claim rests on a written agreement to sell, which is stated to have been executed by Mst.Abida Parveen and attested by marginal witnesses. The trial Court examined the agreement in the light of Articles 79 and 82 of the QSO, 1984. Article 79 provides that a document required by law to be attested shall not be used as evidence until at least two attesting witnesses have been called for the purpose of proving its execution, if there is an attesting witness alive and subject to the process of the Court. Article 82 then addresses the situation in which an attesting witness denies or does not recall the execution and permits proof of

execution by other evidence. The statutory text, as reproduced in the QSO, makes it clear that "proof of execution of document required by law to be attested" is ordinarily through an attesting witness and that "when attesting witness denies the execution" the party may resort to other admissible evidence to establish execution.

13. The record shows that the applicants examined Ghufran Liaquat (L.R. of the original plaintiff) and produced the original agreement, as well as examined the marginal witnesses, including Javed Iqbal Bukhari and Tallat Arif, besides another witness, Abdul Wahab. One of the attesting witnesses, Javed Iqbal, did not support the applicants' version and, as noted by the trial Court, went to the extent of stating that the document pertained to the repayment of an old loan rather than a sale transaction. The trial Court, after discussing his testimony, found that he had denied the execution of the agreement as a sale agreement and that his evidence undermined the applicants' case. The other marginal witness, Tallat Arif, was found to be inconsistent and not confidence-inspiring; the trial Court recorded that his version did not satisfactorily explain the circumstances of execution, payment of consideration or the alleged postponement of the sale deed due to litigation. Learned appellate Court, upon re-appraisal, concurred with this appreciation and held that the applicants had failed to prove the agreement in terms of Article 79 and that the so-called "other evidence" relied upon did not meet the threshold of Article 82.

14. Learned counsel for the applicants has argued that the Courts below misapplied Article 79 by treating it as an inflexible rule and failed to give effect to Article 82, which allows proof of execution by other evidence when an attesting witness resiles. This contention, however, does not withstand scrutiny when the reasoning of the Courts below is read as a whole. Both Courts have, in fact, considered the entire body of evidence, including the testimony of the L.R., the marginal witnesses and the surrounding

circumstances. They did not reject the agreement solely because one attesting witness resiled; rather, they found that the overall evidence, including the conduct of the parties, the absence of contemporaneous corroboration of payment of Rs.400,000/- and the contradictions in the witnesses' statements, failed to establish that Mst.Abida Parveen had genuinely executed a binding agreement to sell. The trial Court specifically noted that the applicants had not produced any independent documentary proof of payment of the substantial sale consideration, nor any convincing explanation for why such a significant transaction remained in limbo for years without any written acknowledgement beyond the disputed agreement.

15. The applicants have also stressed that the non-appearance of defendants No.1 to 3, 5 and 6 in the witness box should have led to an adverse presumption against them. While it is correct that a party who abstains from the witness box may, in appropriate circumstances, invite an adverse inference, such inference is not automatic. It cannot substitute for the positive proof required to establish execution of a disputed document. The Courts below were entitled to consider that the burden to prove the agreement lay squarely on the applicants and that this burden could not be discharged merely by pointing to the silence or absence of some of the defendants, particularly when one of the key legal heirs (defendant No.4) did step into the witness box and denied the transaction. The revisional record does not reveal any misdirection of law on this aspect; rather, it shows a conscious application of the principle that the plaintiff must succeed on the strength of his own case and not on the weakness of the defence.

16. Section 12 of the Specific Relief Act, 1877, provides that subject to the other provisions of the Chapter, specific performance of a contract may, in the discretion of the Court, be enforced where pecuniary compensation is not an adequate relief and the explanation raises a presumption that breach of a contract to transfer immovable property cannot be adequately relieved by

compensation in money. At the same time, section 21 declares that contracts for which compensation in money is an adequate relief, or which are uncertain, or otherwise not fit for specific enforcement, cannot be specifically enforced, while section 22 underscores that the relief is discretionary and not to be granted merely because it is lawful to do so. The statutory text, as reproduced in the Specific Relief Act, states that "specific performance of any contract may in the discretion of the Court be enforced" in the circumstances enumerated and that "the following contracts cannot be specifically enforced", including those where compensation is an adequate relief or the terms cannot be found with reasonable certainty. These provisions make it plain that even where a contract is proved, the decree for specific performance is not a matter of right but of judicial discretion, to be exercised on sound legal principles.

17. In the present case, the Courts below have concurrently held that the very foundation of the claim, the alleged agreement to sell, has not been proved in accordance with law. Once that conclusion is reached, the question of exercising discretion in favour of specific performance does not arise. Even otherwise, the applicants' conduct, as noted by the Courts below, does not inspire confidence. The agreement is said to be of 2006, the alleged full payment of Rs.400,000/- is not supported by any independent documentary evidence. The suit was instituted only after the death of the alleged executant, when the legal heirs were in a position to contest the claim. The plea that the execution of the sale deed was postponed due to litigation is also not supported by any contemporaneous correspondence or notice calling upon the vendor or her heirs to perform their part immediately after the compromise order of 22.12.2010. In a comparable case involving a suit for specific performance based on an agreement to sell, where the plaintiff fails to establish the genuineness of the agreement and the payment of consideration through cogent and confidence-inspiring evidence, the concurrent dismissal of the suit by the Courts below does not call for interference in revision.

18. Where the plaintiff fails to prove the agreement to sell by reliable evidence or where the circumstances cast serious doubt on the bona fides of the transaction, the Courts are justified in refusing specific performance and such refusal, when based on a proper appraisal of evidence, is not open to revisional interference. The applicants have not pointed to any perversity in the reasoning of the Courts below; rather, their submissions invite this Court to reappraise the evidence and substitute its own view for that of the trial and appellate Courts, which is impermissible within the narrow confines of section 115 C.P.C.

19. In the totality of the circumstances, this Court is satisfied that both the Courts below have correctly appreciated the evidence and exercised their jurisdiction in accordance with law. No illegality, material irregularity, or jurisdictional defect has been pointed out which would warrant interference with the concurrent findings. The applicants have failed to establish that the impugned judgments are perverse, arbitrary, or contrary to the settled principles governing proof of attested documents and the grant of specific performance.

20. Accordingly, this Civil Revision Application is dismissed. The concurrent judgments and decrees of both the Courts below are maintained. In the circumstances of the case, there shall be no order as to costs.

JUDGE

“Adnan Ashraf Nizamani”